

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

B. CAROL GLOVER,  
Plaintiff,  
vs.  
WACHOVIA EQUITY SERVICING LLC;  
NORTHWEST TRUSTEE SERVICES, INC.;  
WELLS FARGO HOME MORTGAGE; and  
ROUTH CRABTREE OLSEN, P.C.;  
Defendants.

No. 03:11-cv-00210-HU

**FINDINGS AND RECOMMENDATIONS  
ON PRETRIAL MOTIONS**

## FINDINGS AND RECOMMENDATIONS ON PRETRIAL MOTIONS

B. Carol Glover  
26736 N.W. Williams Canyon Road  
Gaston, OR 97119

Plaintiff *pro se*

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ROUTH CRABTREE OLSEN, P.C.  
621 S.W. Alder Street  
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Wachovia Equity Servicing LLC,  
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and Routh Crabtree Olsen, P.C.

## 1 - FINDINGS AND RECOMMENDATIONS

HUBEL, United States Magistrate Judge:

**PROCEDURAL HISTORY**

The plaintiff B. Carol Glover brings this action for a declaratory judgment and injunctive relief to overturn the defendants' foreclosure of her home in Gaston, Oregon (the "Property"). A protracted procedural history has culminated in the present action. The procedural history includes repeated lawsuits filed by Glover against various holders of the mortgage loan, a bench trial and verdict against Glover, nine different bankruptcy petitions filed by Glover, and court orders barring Glover from further bankruptcy filings for periods of time and sanctioning her for discovery violations. A detailed chronology of the procedural history appears in *Glover v. Bank of New York*, 208 Or. App. 545, 147 P.3d 336 (2006) (attached as Exhibit C to Dkt. #18), and in the defendants' briefs, Dkt. #12 & #30, in support of the defendants' motions to dismiss Glover's Complaint. I therefore provide an abbreviated summary here.

On November 5, 1997, Glover refinanced the Property and obtained a mortgage loan in the amount of \$294,000 from Americredit Corporation. She executed a Deed of Trust in favor of Americredit to secure repayment of the loan. Dkt. #18, Ex. A, Deed of Trust. The mortgage loan and Deed of Trust have been assigned several times over the years, with Wachovia Equity Servicing LLC ("Wachovia"), NWTs, and Wells Fargo Home Mortgage ("Wells Fargo") in the chain of assignees and successor trustees. See Dkt. #18, Ex. B; Dkt. #12, p. 4, ¶ 7; Dkt. #30, pp. 3-4 & 9. Wells Fargo currently is the servicer of Glover's loan. Dkt. #30, p. 9.

1        Glover was in default on her loan by the end of 1998, and the  
2 then-current holder of the loan initiated nonjudicial foreclosure  
3 proceedings. *Glover*, 208 Or. App. at 547, 147 P.3d at 337.<sup>1</sup> To  
4 stay the foreclosure proceedings and prevent sale of the Property,  
5 Glover filed a series of bankruptcy petitions. She filed a Chapter  
6 13 petition in August 1999, on her own behalf; a Chapter 13  
7 petition in March 2000, on behalf of "her incapacitated husband";  
8 a Chapter 13 petition in May 2001, on her own behalf; and another  
9 Chapter 13 petition in May 2002, also on her own behalf. *Id.*, 208  
10 Or. App. at 547-48, 147 P.3d at 337-38. The 1999 and 2000  
11 bankruptcy petitions were dismissed on Glover's motion. *Id.* The  
12 2001 bankruptcy petition was "apparently dismissed because [Glover]  
13 failed to make payments according to her Chapter 13 repayment  
14 plan." *Id.*, 208 Or. App. at 548, 147 P.3d at 337. The 2002  
15 bankruptcy petition was dismissed with prejudice, and Glover was  
16 barred from filing another bankruptcy proceeding for two years  
17 "based on the court's finding of 'bad faith' pursuant to *In re*  
18 *Leavitt*, 171 F.3d 1219 (9th Cir. 1999)." *Id.*, 208 Or. App. at 548-  
19 49, 147 P.3d at 337-38 (footnote omitted). Glover filed another  
20 Chapter 13 petition on her husband's behalf in October 2002. That  
21 case also was dismissed for failure to make payments under the  
22 Chapter 13 repayment plan. *Id.*, 208 Or. App. at 549, 147 P.3d at  
23 338.

24        On May 29, 2003, Glover filed suit in Yamhill County, Oregon,  
25 against The Bank of New York and HomeEq Servicing Corporation. She  
26

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27        <sup>1</sup>The following procedural history also is recited by the  
28 defendants in their briefs in support of their motions to dismiss.  
See Dkt. #12, pp. 4-9; Dkt. #31, pp. 9.

1 alleged the bank had charged her for property taxes and fees on the  
2 Property that were not actually due, and she claimed the bank's  
3 actions had prevented her from refinancing the Property at a lower  
4 interest rate, damaging her in the amount of \$15,000. She also  
5 sought declaratory and injunctive relief, asking the court to  
6 require the defendants to provide an accounting of all payments  
7 made under the terms of the 1997 note, and enjoining the scheduled  
8 foreclosure of the Property. She stated the defendants claimed she  
9 owed over \$450,000 on the note, but she actually owed "considerably  
10 less than that claimed by [d]efendants." *Id.*, 208 Or. App. at 549,  
11 147 P.3d at 338. The court granted the defendants' motion for  
12 summary judgment, finding Glover was judicially estopped from  
13 asserting claims against the defendants that she had failed to  
14 raise in response to the defendants' proofs of claim filed in her  
15 bankruptcy proceedings. Judgment was entered for the defendants,  
16 including an attorney's fee award as a sanction for Glover's  
17 failure to comply with a court order granting an earlier motion to  
18 compel filed by the defendants. *Id.*, 208 Or. App. at 550-51, 147  
19 P.3d at 338-39.

20 Glover appealed. The Oregon Court of Appeals affirmed the  
21 trial court's grant of summary judgment on the breach of contract  
22 claim on the basis of judicial estoppel, but reversed the judgment  
23 as to Glover's claims for declaratory and injunctive relief.  
24 *Glover, passim*. A bench trial was held, resulting in a judgment  
25 for the defendants. See Dkt. #18, Ex. F, General Judgment, entered  
26 December 4, 2007.

27 In February 2008, NWTS once again initiated foreclosure  
28 proceedings against the Property, based on Glover's failure to make

1 payments since January 1, 1999. Sale of the Property was scheduled  
2 for June 30, 2008. *Id.*, Ex. G. On June 27, 2008, Glover filed a  
3 new Chapter 13 bankruptcy petition. The bankruptcy case "was  
4 dismissed on August 18, 2008, for [Glover's] failure to file  
5 documents as ordered by the court[.]" *Id.*, p. 6, ¶ 13 (citing Dkt.  
6 #18, Ex. H, copy of docket sheet from the bankruptcy action).

7 The same day that Glover filed the bankruptcy petition, she  
8 also filed another state court action in Yamhill County, against  
9 all of the prior mortgage loan defendants, and adding Wachovia and  
10 NWTs. In a twenty-nine-page Amended Petition, Glover sought to set  
11 aside the foreclosure; cancel the note and deed of trust "for  
12 fraud, usury, material misrepresentation, fraud in the inducement,  
13 fraud in fact, [and] lack of adequate consideration"; recoup monies  
14 paid to the defendants; quiet title to the Property in Glover; and  
15 "set aside void judgment." *Id.*, Ex. I. The current defendant  
16 Routh Crabtree Olsen, P.C. ("Routh") represented NWTs in the case.  
17 Dkt. #12, p. 7, ¶ 14. On August 18, 2008, the court granted the  
18 defendants' motion to dismiss. Glover appealed, and according to  
19 the defendants, the Oregon Court of Appeals affirmed without  
20 opinion. *Id.*, ¶ 15.

21 Glover filed another Chapter 13 bankruptcy petition on  
22 October 17, 2008. Wachovia's motion for relief from the stay was  
23 granted on November 24, 2008, and the bankruptcy case thereafter  
24 was dismissed on Glover's motion. See Dkt. #18, Ex. K. Wachovia  
25 recommenced the foreclosure, and sale of the Property was scheduled  
26 for January 16, 2009.

27 On January 16, 2009, Glover filed yet another Chapter 13  
28 petition. Because this was her third bankruptcy petition following

1 two prior dismissals within one year's time, "no automatic stay was  
2 in effect, and NWTs conducted the foreclosure sale that same day,  
3 January 16, 2009, at 10:00 AM. The Property reverted to Wachovia."  
4 Dkt. #12, ¶ 17 (citing 11 U.S.C. § 362(c)(4)(A)(i)). Glover moved  
5 to dismiss the pending bankruptcy action after entry of an order in  
6 that case confirming that no bankruptcy stay was in effect. *Id.*  
7 (citing Dkt. #18, Ex. M)

8 Wachovia filed a Forcible Entry and Detainer action against  
9 Glover on February 19, 2009, to evict her from the Property.  
10 Wachovia's motion for summary judgment was granted, and a General  
11 Judgment of Restitution was entered on August 6, 2009. Dkt. #18,  
12 Ex. O; see *id.* Ex. P, transcript of summary judgment hearing.  
13 Glover appealed, and on October 27, 2010, the Oregon Court of  
14 Appeals affirmed the judgment without opinion. Dkt. #12, ¶ 18.  
15 Glover filed a petition for reconsideration that was denied on  
16 December 15, 2010. Dkt. #33, Ex. S. She filed a petition for  
17 review with the Oregon Supreme Court that was denied on April 7,  
18 2011. *Id.*, Ex. T.

19 On April 22, 2010, Glover filed another Chapter 13 bankruptcy  
20 petition. At a June 2, 2010, hearing on the court's *sua sponte*  
21 order to show cause, the court dismissed the case with prejudice  
22 and imposed a five-year bar to the refiling of any bankruptcy  
23 petition by Glover. Dkt. #18, Ex. R, p. 9. The court found Glover  
24 had "over a number of years . . . unfairly manipulated the  
25 bankruptcy code to prevent creditor activity with which [she]  
26 disagree[d]." *Id.*, p. 7. The court found she had "filed the  
27 current Chapter 13 case and plan in an inequitable manner knowing  
28 that the plan that's been filed is patently not confirmable and not

feasible on its face.” *Id.*, pp. 7-8. The court held Glover had filed her repeated bankruptcy petitions “with the intent to impose a series of stays to prevent strategically creditor foreclosures on property,” and her behavior was “egregious.” *Id.*, p. 8.

Glover filed the present action on February 18, 2011. This time, in addition to seeking declaratory and injunctive relief against Wachovia, NWTs, and Wells Fargo, she has added as a defendant the law firm that represented Wachovia and NWTs in her past state court lawsuits.

#### **THE PRESENT MOTIONS**

The case now is before the court on several related motions:

- ▶ Dkt. #11, Motion to Dismiss filed by NWTs and Routh, supported by a brief, Dkt. #12; the Declaration of Teresa M. Shill, Dkt. #13; and an appendix of exhibits, Dkt. #18.
- ▶ Dkt. #16, a motion by NWTs and Routh asking the court to take judicial notice of the Yamhill County real property records, and pleadings and orders filed in both of Glover’s state court actions and all of her bankruptcy actions, all of which are attached to these defendants’ appendix of exhibits, Dkt. #18; and a supporting Declaration of Teresa M. Shill, Dkt. #17.
- ▶ Dkt. #30, Motion to Dismiss filed by Wachovia and Wells Fargo, supported by a brief, Dkt. #31; and the Declaration of John Thomas, Dkt. #33.
- ▶ Dkt. #32, a motion by Wachovia and Wells Fargo asking the court to take judicial notice of the same documents requested by the other defendants; supported by the Declaration of John Thomas, Dkt. #33, which adds the orders of the Oregon Court of

1 Appeals and Oregon Supreme Court denying Glover's petitions  
2 for review in her second state court action.

3 ▶ Dkt. #35, Glover's motion asking the court to take judicial  
4 notice of a Consent Order issued on March 31, 2011, by the  
5 Comptroller of the Currency in *In re Wells Fargo Bank, N.A.*,  
6 No. AA-EC-11-19, regarding "certain deficiencies and unsafe or  
7 unsound practices in residential mortgage servicing" identi-  
8 fied by the Comptroller in Wells Fargo's residential real  
9 estate mortgage foreclosure processes. The motion is  
10 supported by a brief, Dkt. #39. In addition, Glover has filed  
11 a "Certificate of Conferral [pursuant to] LR 7-1," to which  
12 she has attached a number of exhibits, Dkt. #36.

13 ▶ Dkt. #37, Glover's motion to strike all of the defendants'  
14 motions and supporting exhibits as "'insufficient defense  
15 . . . immaterial, impertinent, or scandalous matter,'"   
16 pursuant to Federal Rule of Civil Procedure 12(f) (quoting the  
17 Rule).

18 ▶ Dkt. #38, Glover's Motion to Make a More Definite Statement,  
19 arguing the defendants' motions and exhibits are "'so vague or  
20 ambiguous that the party cannot reasonably prepare a  
21 response.'" (Quoting Fed. R. Civ. P. 12(e)). This motion  
22 also is supported by Glover's brief, Dkt. #39.

23 ▶ The defendants NWTS and Routh filed a reply in support of  
24 their motion to dismiss, Dkt. #11.

25 ▶ The defendants Wachovia and Wells Fargo filed a combined reply  
26 in support of their motion to dismiss and response to Glover's  
27 motions, Dkt. #42.



**REQUESTS FOR JUDICIAL NOTICE**

As a preliminary matter, I **grant** all of the parties' requests for judicial notice (Dkt. #16, #32, & #35), to the extent my Findings and Recommendations reference any of the materials. See *Campbell v. PricewaterhouseCoopers, LLP*, \_\_\_ F.3d \_\_\_, 2011 WL 2342740, at \*2 n.3 (9th Cir. June 15, 2011) (citing Fed. R. Evid. 201(b)).<sup>2</sup>

Wachovia and Wells Fargo argue the court should deny Glover's request for judicial notice of the OCC Consent Order because it is "pure inadmissible hearsay" and "an unauthenticated document, which changes nothing with respect to the prior adjudication of [Glover's] claims." Dkt. #42, p. 5. Federal Rule of Evidence 201(b) provides "that judicial notice is appropriate for facts 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'" *Campbell*, 2011 WL 2342740, at \*2 n.3 (quoting Fed. R. Evid. 201(b)). The Consent Order offered by Glover is as much a public record as the court docket sheets offered as exhibits by the defendants.<sup>3</sup>

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<sup>2</sup>Although, the defendants have not provided copies of the Yamhill County Circuit Court docket sheets and orders in attested and certified form as required by 28 U.S.C. § 1738, it is proper for the court to take judicial notice of the documents based on counsel's declaration of the documents' authenticity. See *Ammons v. Burkum*, No. 98-C-861-C, 2000 WL 34230088, at \*2 (W.D. Wis. Dec. 8, 2000) (citations omitted).

<sup>3</sup>The court was able to locate the Consent Order offered by Glover in a matter of seconds using a simple Internet search. See <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-47k.pdf>. The Comptroller's website is a source "whose accuracy cannot reasonably be questioned."

In contrast, the docket sheets and orders from the Yamhill County Circuit Court appear to be available only from the court itself. See [http://courts.oregon.gov/Yamhill/court\\_records.page?](http://courts.oregon.gov/Yamhill/court_records.page?).

1 **MOTIONS TO DISMISS**

2 **A. The Complaint**

3 In her Complaint, Glover seeks declaratory and injunctive  
 4 relief relating to the Property. She seeks a declaration of her  
 5 "rights and status" under the original Note and Deed of Trust, and  
 6 "[a]ny and all agreements or contracts upon which Defendants may  
 7 rely on [sic] to enforce anything against [her.]" Dkt. #1, ¶ 2(A)  
 8 & (B). She also seeks imposition of a "constructive trust against  
 9 Defendant [NWTs] for its role in foreclosures on these properties,  
 10 particularly Jeff Stenman"; a declaration as to "[w]ho may and may  
 11 not qualify as the real parties in interest to the Note and Deed of  
 12 Trust"; and "judgment expunging the mortgage and quieting the title  
 13 to [the Property]." *Id.*, ¶ 2(C), (D) & (E). Glover further seeks  
 14 an injunction "to bar Defendants from proceeding against [her] home  
 15 during the pendency of this case." *Id.*, ¶ 3.

16  
 17 **B. Pleading Standards**

18 All of the defendants seek dismissal of Glover's Complaint for  
 19 failure to comply with Federal Rule of Civil Procedure 8. See Dkt.  
 20 #12, ¶ 22; Dkt. #32, p. 11. They ask the court to strike the  
 21 Complaint in its entirety, or alternatively to require Glover to  
 22 amend her Complaint to state a claim. *Id.*

23 Rule 8 requires that a pleading contain three elements. Two  
 24 of the three - jurisdictional allegations and a demand for the  
 25 relief sought - arguably are present in Glover's Complaint. But  
 26 Rule 8 also requires "a short and plain statement of the claim  
 27 showing that the pleader is entitled to relief." Fed. R. Civ. P.  
 28 8(a)(2). Although Rule 8's pleading standard "does not require

1 'detailed factual allegations,' . . . it demands more than an  
 2 unadorned, the-defendant-unlawfully-harmed-me accusation." *Ash-*  
 3 *croft v. Iqbal*, \_\_\_ U.S. \_\_\_, 120 S. Ct. 1937, 1949, 173 L. Ed. 2d  
 4 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
 5 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007)). Glover does  
 6 not even state that the defendants unlawfully harmed her, let alone  
 7 how the defendants' actions would entitle her to relief. She sets  
 8 forth **no facts** to indicate why she is entitled to relief, as  
 9 required by Rule 8(a)(2). "[W]hen the allegations in a complaint  
 10 . . . could not raise a claim of entitlement to relief, this basic  
 11 deficiency should . . . be exposed at the point of minimum  
 12 expenditure of time and money by the parties and the court." *Bell*  
 13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 558, 127 S. Ct. 1955,  
 14 1966, 167 L. Ed. 2d 929 (2007) (internal quotation marks, citations  
 15 omitted).

16 Chief Judge Aiken of this court recently set forth the  
 17 standard for the court's consideration of a motion to dismiss in  
 18 *Gambee v. Cornelius*, No. 10-CV-6265-AA, slip op., 2011 WL 1311782  
 19 (D. Or. Apr. 1, 2011) (Aiken, C.J.). Judge Aiken observed:

20 "[F]or a complaint to survive a motion to  
 21 dismiss, the non-conclusory 'factual content,'  
 22 and reasonable inferences from that content,  
 23 must be plausibly suggestive of a claim  
 24 entitling the plaintiff to relief." *Moss v.*  
 25 *United States Secret Serv.*, 572 F.3d 962, 969  
 26 (9th Cir. 2009). "A claim has facial  
 27 plausibility when the plaintiff pleads factual  
 28 content that allows the court to draw the  
 reasonable inference that the defendant is  
 liable for the misconduct alleged." *Ashcroft*  
*v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).  
 "[O]nce a claim has been stated adequately, it  
 may be supported by showing any set of facts  
 consistent with the allegations in the  
 complaint." *Bell Atlantic Corp. v. Twombly*,  
 550 U.S. 544, 563[, 127 S. Ct. 1955, 1969, 167

1 L. Ed. 2d 929] (2007). "[G]enerally the scope  
 2 of review on a motion to dismiss for failure  
 3 to state a claim is limited to the Complaint."  
*Daniels-Hall*, 629 F.3d at 998.

4 *Id.* at \*2.

5 Glover's Complaint wholly fails to set forth factual content  
 6 that plausibly suggests any claim entitling her to relief. I  
 7 therefore recommend her Complaint be dismissed for failure to  
 8 comply with Rule 8(a)(2). For the reasons discussed below, I  
 9 further recommend that the dismissal be with prejudice.

### 10 **C. Claim Preclusion**

11 All of the defendants argue they should be dismissed from this  
 12 case under the doctrine of claim preclusion, and "claim preclusion  
 13 by privity." See Dkt. #12, ¶¶ 23-30; Dkt. #31, pp. 14. "[T]he  
 14 doctrine of claim preclusion, or *res judicata*, . . . bars 'repeti-  
 15 tious suits involving the same cause of action' once 'a court of  
 16 competent jurisdiction has entered a final judgment on the  
 17 merits.'" *United States v. Tohono O'Odham Nation*, \_\_\_ U.S. \_\_\_,  
 18 131 S. Ct. 1723, 1730, 179 L. Ed. 2d 723 (2011) (quoting *Comm'r v.*  
 19 *Sunnen*, 333 U.S. 591, 597, 68 S. Ct. 715, 719, 92 L. Ed. 898  
 20 (1948)). The doctrine further bars claims that a party either  
 21 raised, or could have raised, in a prior action. *Stewart v. U.S.*  
 22 *Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (citing *Owens v. Kaiser*  
 23 *Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)).

24 The doctrine applies when three criteria are met: (1) the  
 25 claims are the same; (2) a final judgment was entered on the  
 26 merits; and (3) the parties are either the same or are in privity  
 27 with one another. *Id.*

1        There is no question that the claims Glover attempts to raise  
2 here either were specifically raised in her prior state court  
3 action that resulted in a judgment against her, or "could have been  
4 raised" in either the prior state court actions or her bankruptcy  
5 cases. Accordingly, Glover's claims are barred under the doctrine  
6 of claim preclusion.

7        To the extent Wachovia, NWTS, and Wells Fargo were not parties  
8 to one or more of Glover's prior actions, they are in privity with  
9 the defendants and creditors in those actions as successors in  
10 interest under the mortgage loan and Deed of Trust. Wachovia and  
11 Wells Fargo, as subsequent assignees of the debt, and NWTS, as  
12 successor trustee under the Deed of Trust, stand in the shoes of  
13 the original lender and trustee. See *State ex rel. Adult & Fam.*  
14 *Servs. Div. v. Lester*, 45 Or. App. 389, 392, 608 P.2d 588, 590  
15 (1980) ("An assignee stands in the shoes of his assignor").  
16 Wachovia, NWTS, and Wells Fargo therefore are entitled to dismissal  
17 under the doctrine of claim preclusion by privity. "[C]laim  
18 preclusion applies to parties in 'privity' with parties to the  
19 earlier action." *Lettenmaier v. Fed. Home Loan Mortg. Corp.*, slip  
20 *op.*, 2011 WL 1938166 (D. Or. May 20, 2011) (citing *Bloomfield v.*  
21 *Weakland*, 339 Or. 504, 510-11, 123 P.2d 275, 279 (2005)). Being in  
22 "privity" with another simply means "the relationship between the  
23 one who is a party on the record and another is close enough to  
24 include the other within the *res judicata*." *Id.* (internal  
25 quotation marks, citations omitted).

26        I therefore recommend that Wachovia, NWTS, and Wells Fargo be  
27 dismissed under the doctrine of claim preclusion, or, as  
28 applicable, claim preclusion by privity.

**D. Justiciable Controversy and Mootness**

The defendants argue that based on judgments entered in Glover's prior state court action, her claims in the present action are moot, and no justiciable controversy exists. Dkt. #12, ¶¶ 36 & 37; Dkt. #31, pp. 15-16. They further argue Glover's declaratory relief claim is moot. Dkt. #12, ¶ 38; Dkt. #31, pp. 18-19. The defendants note that Oregon courts have denied standing under ORS § 28.020, Oregon's declaratory judgment statute, when the effect of such a judgment would be "either too speculative or entirely missing." *Id.* (citing *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 228 P.3d 650 (2010), in turn citing *Vannatta v. Oregon Gov't Ethics Comm.*, 347 Or. 449, 470, 222 P.3d 1077, 1088 (2009)). In *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 228 P.3d 650 (2010), the Oregon Court of Appeals held that to be justiciable, "the controversy . . . must involve 'a dispute based on present facts rather than on contingent or hypothetical events.'" *Id.*, 234 Or. App. at 466, 228 P.3d at 655.

Given the most generous reading possible, Glover has posed only moot, hypothetical questions in her Complaint. She questions who "may and may not qualify as the real parties in interest to the Note and Deed of Trust," and appears (though not clearly) to question whether NWTs had the right to pursue foreclosure proceedings. These matters have been adjudicated by a court of competent jurisdiction. The foreclosure process is complete, the Property has been sold, and Glover has been ordered to vacate the property. There is no justiciable controversy that remains here, and Glover's Complaint should be dismissed.

1                   ***E. Dismissal of Routh Crabtree Olsen, P.C.***

2           Routh argues it should be dismissed with prejudice. Dkt. #12,  
3 ¶¶ 31-36. Routh asserts, correctly, that Glover has failed to  
4 state any facts at all about Routh in her Complaint, or to make any  
5 allegations of wrongdoing against Routh. Routh's only interaction  
6 with Glover was the firm's representation of NWTs in Glover's  
7 second state court action.

8           Even if Glover had stated facts sufficient to assert a claim  
9 against Routh for wrongful prosecution of a civil proceeding, the  
10 fact that Routh's client prevailed in the civil action in question  
11 would render such a claim moot. Allowing such a claim to proceed  
12 would have a chilling effect on the entire judicial process,  
13 "'render[ing] attorneys fearful of being held liable as insurers of  
14 the merits of their client's case, and therefore unwilling to  
15 undertake representation in close or difficult matters.'" *Bob*  
16 *Godfrey Pontiac, Inc. v. Roloff*, 291 Or. 318, 332 n.9, 630 P.2d  
17 840, 848 n.9 (1981) (quoting *Lyddon v. Shaw*, 372 N.E. 2d 685, 690  
18 (Ill. Ct. App. 1978)).

19           Glover has failed to state a claim against Routh for which  
20 relief could be granted, and Routh should be dismissed from the  
21 case with prejudice.

22  
23                   ***F. Further Amendments***

24           Wachovia and Wells Fargo further argue that Glover should not  
25 be allowed the opportunity to amend her Complaint to attempt to  
26 cure any of the errors discussed above because any amendments would  
27 be futile. Dkt. #31, p. 19. Although the Federal Rules of Civil  
28 Procedure direct the court to allow amendments to pleadings "freely

1 . . . when justice so requires," Fed. R. Civ. P. 15(a)(2), "[a]  
 2 district court does not err in denying leave to amend where the  
 3 amendment would be futile." *Gardner v. Martino*, 563 F.3d 981, 990  
 4 (9th Cir. 2009) (citing *Thinket Ink Info. Res., Inc. v. Sun*  
 5 *Microsys., Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004)). "'When a  
 6 proposed amendment would be futile, there is no need to prolong the  
 7 litigation by permitting further amendment.'" *Id.* (quoting *Chaset*  
 8 *v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002)).

9 I agree that any possible amendment to Glover's pleading would  
 10 be futile. I therefore recommend she not be granted leave to  
 11 replead, and this case be dismissed with prejudice.

#### 12 13 **GLOVER'S MOTIONS**

14 Glover moves to strike all of the defendants' motions and  
 15 supporting exhibits "by Rule 12(f)'s 'insufficient defense . . .  
 16 immaterial, impertinent, or scandalous matter' standards." Dkt.  
 17 #37, p. 1. She similarly asks the court to strike "all mentions of  
 18 'claim preclusion' as insufficient, impertinent and/or scandalous."  
 19 *Id.*, pp. 1-2.

20 Glover focuses her arguments that claim preclusion is not  
 21 applicable in this case on the status of Wells Fargo. She argues  
 22 her claims against Wells Fargo could not have been included in any  
 23 prior case because "Wachovia became a part of Wells Fargo on  
 24 'May 1, 2010[,]'. . . [and Glover's] last litigation was completed  
 25 in the trial court in August 2009, and the rest was appeal." *Id.*,  
 26 p. 3 (citation omitted); see *id.*, p. 4. Glover misunderstands the  
 27 law applicable to the assignment of indebtedness and security  
 28 instruments. When the mortgage was transferred to Wells Fargo,



1 Wells Fargo then stood in the shoes of the original lender. See  
2 *Lester*, 45 Or. App. at 392, 608 P.2d at 590. Glover's claims could  
3 have been brought in her bankruptcy cases and/or her state court  
4 actions against previous holders of the note and trustees under the  
5 Deed of Trust. She therefore is precluded from bringing those  
6 claims in this action.

7 Glover argues her claims are not moot because it is only the  
8 defendants' attorneys who are "relitigating past battles here."  
9 Dkt. #39, p. 4. She further asserts the defendants' arguments that  
10 there is no justiciable controversy present in this case should be  
11 disregarded because the defendants all have "made the same mistake  
12 of basing their entire arguments on Oregon law, not 28 U.S.C.A.  
13 Chapter 151." *Id.* She argues that because her claims are brought  
14 under the federal Declaratory Judgment Act, "any state authorities  
15 should be considered irrelevant." *Id.*, p. 5. I reject these  
16 arguments as nonsensical, and unsupported by any applicable law.

17 Glover seeks a declaratory judgment on matters governed solely  
18 by state law. The Declaratory Judgment Act does not create a  
19 substantive right to relief; rather, the statute "provides the  
20 court with a discretionary procedural remedy." *Swedlow, Inc. v.*  
21 *Rohm & Haas Co.*, 455 F.2d 884, 885 (9th Cir. 1972). As the Ninth  
22 Circuit explained half a century ago:

23 It is not the purpose of the Declaratory  
24 Judgment Act to allow disputes arising in the  
25 course of state court litigation to be argued  
26 in the federal courts instead. The object of  
27 the statute is to afford a new form of relief  
28 where needed, not to furnish a new choice of  
tribunals or to draw into the federal courts  
the adjudication of causes properly cognizable  
by courts of the states.

1 *Shell Oil Co. v. Frusetta*, 290 F.2d 689, 692 (9th Cir. 1961)  
2 (internal quotation marks, citations omitted). The present action  
3 is one properly cognizable by the courts of Oregon; indeed, the  
4 claims brought by Glover here already have been adjudicated by the  
5 Oregon courts.

6 In conjunction with her Motion to Strike, Glover also seeks an  
7 order for the defendants "to make a more definite statement in  
8 their motions," asserting the motions are "'so vague or ambiguous  
9 that the party cannot reasonably prepare a response.'" Dkt. #38,  
10 p. 1 (quoting Fed. R. Civ. P. 12(e)). She again argues she is  
11 seeking only declaratory relief, and the "Defendants' motions and  
12 notices must fail based on the rather plain terms of [the  
13 Declaratory Judgment Act]." *Id.*, p. 2.

14 Once again, Glover misapprehends the purpose and requirements  
15 of the Declaratory Judgment Act. She has failed to bring to the  
16 court an actual case or controversy. Her previous litigation in  
17 state court and federal Bankruptcy Court also indicates she is  
18 simply forum shopping in an attempt to circumvent the defendants'  
19 (and their predecessors') valid, legal attempts to enforce their  
20 rights under loan documents Glover voluntarily signed, and under  
21 which she defaulted more than ten years ago.

22 Glover's motions are as frivolous as her Complaint, and both  
23 her Motion to Strike and her Motion for a More Definite Statement  
24 should be denied.

#### 25 26 **CONCLUSION**

27 In conclusion, I find Glover's Complaint fails to comply with  
28 Federal Rule of civil Procedure 8, fails to state a claim for which

1 relief can be granted, is precluded by the doctrine of claim  
2 preclusion, fails to present a justiciable controversy, and is  
3 frivolous and a waste of the court's time. I recommend her  
4 Complaint be dismissed with prejudice, and her motions be denied.

5  
6 ***SCHEDULING ORDER***

7 These Findings and Recommendations will be referred to a  
8 district judge. Objections, if any, are due by **August 5, 2011**. If  
9 no objections are filed, then the Findings and Recommendations will  
10 go under advisement on that date. If objections are filed, then  
11 any response is due by **August 22, 2011**. By the earlier of the  
12 response due date or the date a response is filed, the Findings and  
13 Recommendations will go under advisement.

14 IT IS SO ORDERED.

15 Dated this 18th day of July, 2011.

16  
17 /s/ Dennis James Hubel  
18 Dennis James Hubel  
19 Unites States Magistrate Judge  
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